deciding whether the disclosure is consistent with the nature of the work product privilege," the ultimate inquiry is whether the disclosure is "inconsistent with maintaining secrecy against opponents." Ibid. (emphasis added).[36/]

The district court erred in concluding on the common interest issue alone that President Clinton's personal counsel's work product privilege was waived. As AT&T makes clear, the absence of a common interest is not sufficient to conclude that there has been a waiver. Indeed, "[a]s articulated by most courts, [a work product] waiver will be found only if the party has voluntarily disclosed the work-product in such a manner that it is likely to be revealed to his adversary. Thus, disclosure simply to another person who has an interest in the information but who is not reasonably viewed as a conduit to a potential adversary will not be deemed a waiver of the protection of the rule." Bowne of New York City, Inc. v. AmBase Corp., 150 F.R.D. 465, 479 (S.D.N.Y. 1993).

If the district court had examined the circumstances surrounding the disclosure of work product to Mr. Lindsey, beyond its common interest analysis, it would have found that the disclosures had been made consistently with "maintaining secrecy against [the adversary]." AT&T, 642 F.2d at 1299. The record is clear and undisputed that disclosures made to Mr. Lindsey were made in confidence and that Mr. Lindsey "maintained the confidentiality of these

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36/ See also In re Sealed Case, 676 F.2d 793, 809 (D.C. Cir. 1982) ("because it looks to the vitality of the adversary system rather than simply seeking to preserve confidentiality, the work product privilege is not automatically waived by any disclosure to a third party"); United States v. Gulf Oil Corp., 760 F.2d 292, 295 (Temp. Emergency Ct. of Ap. 1985) ("A transfer made to a party with 'strong common interests in sharing the fruit of trial preparation efforts,' or such a transfer made concurrently with a guarantee of confidentiality, does not necessarily constitute a waiver of the work product privilege") (quoting AT&T); Latin Investment Corp. v. Drabkin, 160 B.R. 262, 264 (D.C. Bank. Ct. 1993).